

SECOND DIVISION

[G.R. No. 241081, February 11, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
BERNIDO ACABO Y AYENTO,^[*] ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-HC No. 02396, which affirmed the Decision^[3] dated October 19, 2016 of the Regional Trial Court of Loay, Bohol, Branch 50 (RTC) in Crim. Case No. 1417, finding accused-appellant Bernido Acabo y Ayento (Acabo) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[5] filed before the RTC charging Acabo of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that on September 12, 2009, members of the Provincial Mobile Group, Tagbilaran City successfully implemented a buy-bust operation against Acabo, during which two (2) plastic sachets containing white crystalline substance were recovered from him. Thereafter, Acabo and the seized items were brought to the Garcia-Hernandez Police Station, where the inventory was conducted in the presence of two (2) elected public officials, Barangay Kagawads Servidia Cuadra (Cuadra) and Alberto Ladaga (Ladaga), and a PDEA representative, IO1 John Carlo Daquiado (IO1 Daquiado). Afterwards, they went to the Bohol Provincial Police Office, where Media Representative Dave Charles Responde (Media Representative Responde) signed^[6] the Inventory of Property Seized/Confiscated^[7] and the Certificate of Inventory.^[8] The seized items were then brought to the crime laboratory, where, after examination,^[9] the contents thereof yielded positive for 0.08 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.^[10]

In defense, Acabo denied the charges against him, and instead, claimed that on September 12, 2009, he was on his way to his old house to get some snacks when he noticed three (3) armed men by the road riding a motorcycle. Upon asking their purpose, they responded that they would be arresting him for selling *shabu*. He then ran off because he was afraid of being arrested without committing a crime, but eventually stopped when he heard a gunshot fired. He was then handcuffed and brought to the police station, where he saw items that were listed in the inventory sheet. He likewise saw two (2) barangay kagawads who signed the document. He averred that he was framed because he had a minor conflict with a certain PO3 Elvan Cadiz in a previous motorcycle accident.^[11]

In a Decision^[12] dated October 19, 2016, the RTC found Acabo guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine in the amount of P500,000.00. It ruled that the prosecution was able to establish that Acabo was arrested during a buy-bust operation wherein two (2) sachets containing a total of 0.08 gram of white crystalline substance were recovered from him. It likewise did not give credence to Acabo's defense of denial since he failed to show any ill motive on the part of the police officers to impute such crime to him.^[13] Aggrieved, Acabo appealed^[14] to the CA.

In a Decision^[15] dated November 29, 2017, the CA affirmed the RTC ruling. It held that the prosecution was able to establish all the elements of the crime charged, and that the integrity of the seized items was preserved.^[16]

Hence, this appeal seeking that Acabo's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,^[17] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.^[18] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.^[19]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[20] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."^[21] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.^[22]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,^[23] "a representative from the media **and** the Department of Justice (DOJ), and any elected public official";^[24] or (b) if after the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service **or** the media."^[25] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."^[26]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."^[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."^[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.^[29] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.^[30] The foregoing is based on the saving clause found in Section 21 (a),^[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,^[33] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.^[34]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.^[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.^[36] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.^[37]

Notably, the Court, in *People v. Miranda*,^[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."^[39]

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography was not witnessed by the DOJ and media representatives. The absence of the DOJ representative is evident from the Certificate of Inventory,^[40] which only shows the signatures of Media Representative Responte, Barangay Kagawads Cuadra and Ladaga, and IO1

Daquiado as witnesses. Such finding is confirmed by the testimony of the poseur buyer, PO2 Rolex Tamara^[41] (PO2 Tamara), on direct examination, to wit:

[Assistant Provincial Prosecutor Aida Langcamon (APP Langcamon)]: How about the signatures below the phrase, "Witness in the conduct of inventory", whose signatures are these?

[PO2 Tamara]: **These are the signatures of Dave Charles Responte from DYTR, the barangay kagawads of their barangay Manaba, Servidia Cuadra, and Alberto Ladaga, and IO1 John Carlo Daquiado.**

Q: How do you know that these are the signatures of the persons, which were named?

A: I was present during the Inventory.

Q: Did you request them to sign on this Inventory?

A: Yes Maam.^[42]

x x x x

Q: Attached to the record and marked as Exhibit E is a Certificate of Inventory, what relation that document has to the one you mentioned having prepared?

A: This is the document that I mentioned.

Q: And will you please identify the signatures appearing on the lower most portion of that document?

A: **This is the signature of PCI Nicomedes Olaivar, Jr. as team leader; the signature of Dave Charles Responte; signature of Servidia Cuadra; Kagawad Alberto Ladaga, and IO1 John Carlo Daquiado, their signatures.**^[43]

x x x x

Q: What about this space provided for Department of Justice, will you explain before this Honorable Court why this is blank or why there is no signature on that space provided for?

A: **When we went to the Provincial Fiscal's Office, there was no available representative who will sign.**^[44]

Moreover, although Media Representative Responte signed the Inventory of Property Seized/Confiscated and the Certificate of Inventory, he did not actually witness the conduct of the inventory and photography of the seized items at the Garcia-Hernandez Police Station. As the records show, PO2 Tamara testified on cross-examination that the police officers only contacted the media representative upon reaching Tagbilaran, particularly at the Bohol Provincial Police Office,^[45] where Media Representative Responte apparently signed the said certification, viz.:

Q: So this means that that (sic) Certificate of Inventory and Receipt of Property Seized would be prepared and signed by persons who were not present during the inventory, because you attempted to go to the Fiscal's office to have the Fiscal sign in the space provided for the Department of Justice?

A: Based on our operation, if we have to serve a search warrant, all